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February 21, 2025

Hon. Virginia K. DeMarchi  
United States District Court  
Northern District of California  
San Jose Division  
Courtroom 2 – Fifth Floor  
280 South 1st Street  
San Jose, CA 95113

Re: *SVB Financial Trust v. Federal Deposit Insurance Corporation in its Corporate Capacity*, Case No. 23-cv-06543-BLF-VKD; *SVB Financial Trust v. Federal Deposit Insurance Corporation, as Receiver for Silicon Valley Bank and Silicon Valley Bridge Bank, N.A.*, Case No. 24-cv-01321-BLF-VKD

Dear Judge DeMarchi:

We represent Plaintiff SVB Financial Trust (“SVBFT”) in the above-referenced actions and write jointly with counsel for Defendants Federal Deposit Insurance Corporation in its Corporate Capacity (“FDIC-C”), and Federal Deposit Insurance Corporation, as Receiver for Silicon Valley Bank and Silicon Valley Bridge Bank, N.A. (collectively, “FDIC-R”) in connection with the parties’ finalized Joint Stipulation and [Proposed] Order Pursuant to FRE 502 (the “Privilege Stipulation”).

Following the closure of SVB, FDIC-R obtained possession of voluminous pre-closure documents (“Historical Documents”), a portion of which contain documents subject to an exclusive privilege claimed by SVBFG (and now SVBFT). SVBFT agreed to the release of all Historical Documents to FDIC-R, and is agreeing to the release of Historical Documents to FDIC-C, subject to the entry of a Privilege Stipulation pursuant to Federal Rule of Evidence Section 502(d) preserving the parties’ rights to assert privilege over any Historical Documents. The parties have now finalized the terms of a Privilege Stipulation governing the review of potentially privileged Historical Documents.

In an effort to agree upon a process for resolving any privilege disputes that may arise in a way that is suitable for the Court, FDIC-R and SVBFT presented a draft stipulation to Your Honor in December, and Your Honor provided guidance as to how to address any disputes that may arise at a hearing on December 13, 2024. Based on the Court’s guidance at the December 13, 2024 hearing, the parties have proposed a process to address the outstanding question as to how to

adjudicate any privilege disputes that may arise related to Historical Documents. The process, as detailed in the Privilege Stipulation, requires service to the other party of any briefing and accompanying exhibits, a period for review, and an opportunity to raise any dispute with the Court.

The parties also researched the “state law intersection with [FRE] 502(d)” to ensure that submitting documents for the Court’s review *in camera* will not result in privilege waiver, as the Court requested. Submission of disputed documents for *in camera* review will not waive any party’s right to assert privilege over Historical Documents. Fed. R. Evid. 502(d); *Costco v. Super. Ct.*, 47 Cal. 4th 725, 738–39 (2009) (holding that a party claiming privilege “may choose to reveal the communication *in camera*” and that nothing in Cal. Evid. Code § 915 “prevents a party claiming a privilege from making an *in camera* disclosure of the content of a communication to respond to an argument or tentative decision that the communication is not privileged.”); *League of Cal. Cities v. Super. Ct.*, 241 Cal. App. 4th 978, 990 (2015) (while the trial court cannot *order* disclosure of communications claimed to be covered by the attorney-client privilege to rule on the privilege, the holder of the privilege may *request* an *in camera* review of alleged privileged communications to aid the trial court in determining the preliminary fact that a communication was made during the course of an attorney-client relationship or to attempt to prevent disclosure of the communication.” (emphasis added)).

The parties respectfully request the Court’s entry of the enclosed Privilege Stipulation and are available for any further hearing if needed to resolve any additional questions the Court may have.

Respectfully submitted,

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Defendants in No. 5:24-cv-0131-BLF

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ATTESTATION

Pursuant to Civil Local Rule 5-1(I)(3), I attest that all other signatories listed, and on whose behalf this filing is submitted, concur in the filing's content and have authorized the filing.

/s/Julia L. Allen  
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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

SVB FINANCIAL TRUST,

Plaintiff,

v.

FEDERAL DEPOSIT INSURANCE  
 CORPORATION, as Receiver for Silicon  
 Valley Bank and Silicon Valley Bridge Bank,  
 N.A.,

Defendants.

Case No. 5:24-cv-01321-BLF

**JOINT STIPULATION AND  
 [PROPOSED] ORDER PURSUANT TO  
 FRE 502**

The Honorable Beth Labson Freeman

The Honorable Virginia K. DeMarchi

SVB FINANCIAL TRUST,

Plaintiff,

v.

FEDERAL DEPOSIT INSURANCE  
 CORPORATION, in its corporate capacity,

Defendant.

Case No. 5:23-cv-06543-BLF

**JOINT STIPULATION AND  
 [PROPOSED] ORDER PURSUANT TO  
 FRE 502**

The Honorable Beth Labson Freeman

The Honorable Virginia K. DeMarchi



Pursuant to Civil Local Rule 7-12, SVB Financial Trust, as successor to SVB Financial Group (“SVBFT”), and Federal Deposit Insurance Corporation, as receiver for Silicon Valley Bank (“FDIC-R1”) and Silicon Valley Bridge Bank, N.A. (collectively, “FDIC-R”), and Federal Deposit Insurance Corporation, acting in its corporate capacity (“FDIC-C”, together with SVBFT and FDIC-R, the “Parties”), submit this Stipulation and Order to resolve the Parties’ dispute regarding SVBFT’s assertion of an exclusive privilege, including with respect to attorney-client privilege and work product protections, (collectively, the “Exclusive Privilege”) over certain documents possessed by both SVBFT and FDIC-R1.

WHEREAS, upon Silicon Valley Bank’s (“SVB”) closure, FDIC-R1 succeeded by law to the rights of SVB as receiver;

WHEREAS, SVB Financial Group (“SVBFG”) was the parent corporation of SVB prior to SVB’s closure;

WHEREAS, following the closure of SVB, FDIC-R1 obtained possession of certain documents that were previously maintained at SVB (the “Historical Documents”)<sup>1</sup>;

WHEREAS, the Historical Documents are voluminous;

WHEREAS, on December 19, 2023, SVBFG filed suit against FDIC-C (N.D. Cal. No. 5:23-cv-06543-BLF), and on March 5, 2024, SVBFG filed suit against FDIC-R1 and FDIC-R2 (N.D. Cal. No. 5:24-cv-01321-BLF) (together, the “Actions”);

WHEREAS, SVBFG has asserted that it has an Exclusive Privilege over certain of the Historical Documents and FDIC-R1 has disputed SVBFG’s claims of Exclusive Privilege;

WHEREAS, SVBFG and FDIC-R1 have been engaged in a process involving the review and identification by SVBFG of those Historical Documents over which it contends it possesses an Exclusive Privilege with the oversight and involvement of the Court;

WHEREAS, FDIC-C has requested documents that include Historical Documents;

WHEREAS, on November 7, 2024, SVBFG’s Chapter 11 plan of reorganization became

<sup>1</sup> In the course of negotiations between FDIC-R and SVBFG, SVBFG also provided FDIC-R with certain pre-closure board materials previously maintained on the Diligent platform. SVBFG subsequently agreed to formally produce all materials from the Diligent platform to all of the Parties, subject to appropriate protections. The Parties now agree that such materials are included within “Historical Documents” subject to the protections and representations herein.

1 effective, resulting in SVBFG's claims against FDIC-R and FDIC-C being transferred to a  
2 liquidating trust, SVBFT, which is governed by a Liquidating Trust Board comprising four  
3 members with no prior affiliation with SVBFG;

4 WHEREAS, SVBFT represents that pursuant to said Chapter 11 plan of reorganization, it  
5 succeeded to all privilege claims on the Historical Documents previously held by SVBFG;

6 WHEREAS, on January 23, 2025, the caption in Case No. 5:23-CV-06543-BLF was  
7 amended to reflect the substitution of SVBFT for SVBFG as Plaintiff;

8 WHEREAS, on February 3, 2025 the caption in Case No. 5:24-CV-01321-BLF was  
9 amended to reflect the substitution of SVBFT for SVBFG as Plaintiff;

10 WHEREAS, on December 11, 2024, the Court entered the Parties' Joint Stipulation and  
11 Order to Coordinate Discovery in the FDIC Actions (Case No. 5:23-CV-06543-BLF, ECF No.  
12 104);

13 WHEREAS, on February 21, 2025, the Court consolidated the Actions for all purposes  
14 (Case No. 5:24-CV-01321-BLF, ECF No. 165);

15 WHEREAS, in order to facilitate the expeditious resolution of the Actions and avoid  
16 burdening the Court with additional disputes concerning the review and logging or release of  
17 Historical Documents, SVBFT has agreed to the release of all Historical Documents to FDIC-R,  
18 and SVBFT and FDIC-R have agreed to disclose all Historical Documents to FDIC-C in the  
19 Actions, subject to the entry of an order in each FDIC Action pursuant to Federal Rule of  
20 Evidence 502(d) and for purposes of disclosure in the Actions only;

21 WHEREAS, pursuant to Federal Rule of Evidence 502(d), the Court may enter an order  
22 declaring that attorney-client privilege and work product protections are not waived by the  
23 disclosure of documents or information during the course of litigation pending before the Court,  
24 and that such disclosure shall not constitute a waiver of such privilege or protection in this action  
25 or any other federal or state proceeding (including, in this instance, either FDIC Action);

26 WHEREAS, FDIC-R and FDIC-C agree that the release of Historical Documents  
27 constituting or containing information protected by the Exclusive Privilege or any privilege held  
28 jointly by SVBFT, as successor to SVBFG, and FDIC-R1 (the "Joint Privilege") shall not

1 constitute a waiver of the same;

2 WHEREAS, it is the intention of the Parties that no counsel for any Party should be  
3 disqualified for any review or use of any Historical Document; and

4 THEREFORE, in order to protect any legal privilege, including the Exclusive Privilege  
5 or Joint Privilege, afforded to documents and information for purposes of the Actions, and  
6 pursuant to the Court's authority under Federal Rule of Evidence 502, the Parties hereby stipulate  
7 and submit as follows:

8 1. **Non-waiver of the Parties' right to assert privilege.** This Stipulation and Order  
9 shall not constitute a waiver, or estoppel, or otherwise prevent or prejudice the Parties from  
10 asserting any privilege, including the Exclusive Privilege or a Joint Privilege, in this or any other  
11 litigation.

12 2. **Non-waiver of privileges as to third parties.** The release of the Historical  
13 Documents for review by FDIC-R and FDIC-C shall not provide any third party with a basis to  
14 seek disclosure or production of the Historical Documents based on waiver, abandonment,  
15 estoppel, prior disclosure, or any other theory, claim, or argument. Pursuant to Federal Rule of  
16 Evidence 502(d) the release of Historical Documents shall not waive any claim of privilege,  
17 including the Exclusive Privilege or Joint Privilege, in any other federal or State proceeding.

18 3. **No disqualification for viewing documents.** SVBFT agrees that FDIC-R may  
19 review the Historical Documents. SVBFT and FDIC-R agree that FDIC-C may review the  
20 Historical Documents. SVBFT may not seek to disqualify FDIC-R's or FDIC-C's in-house or  
21 outside counsel (together, "FDIC counsel") in the Actions on the basis of any review or use of  
22 Historical Documents that FDIC counsel is entitled to review pursuant to this Stipulation and  
23 Order and has reviewed or used, regardless of whether SVBFT may later contend or the Court  
24 may later find that any reviewed Historical Documents are subject to privilege. Further, SVBFG  
25 and SVBFT agree here that FDIC counsel's review of documents shall not be a basis for  
26 disqualification by SVBFG or SVBFT in any matter.

27 4. **Depositions and Trial.** The Parties further agree that the use of the Historical  
28 Documents shall be limited to the following procedures in the Actions:

1           a. **Depositions.** The Parties may use any Historical Documents in depositions in the  
2 Actions, subject to objection by counsel based on an Exclusive Privilege or Joint Privilege. In the  
3 event of such objection, the Parties may present the dispute to the Court, and the Parties agree in  
4 advance not to oppose recall of a deposition witness if such objection is overruled.

5           b. **Motion Practice or Other Submissions.** The Parties agree that each Party may use  
6 Historical Documents in motions practice, both dispositive and non-dispositive. However, the  
7 Parties further agree that, in order to provide each Party with a manner by which to review  
8 potentially privileged documents before they are filed on the docket, the briefing of motions  
9 should be handled in the following fashion: by a Court-imposed deadline, the parties will *serve*  
10 their motion, opposition, or reply (and all associated exhibits) on all other Parties. The receiving  
11 Parties will then have five days to review the served papers and any associated exhibits to  
12 determine whether they contend that any information or material therein is privileged. If any  
13 receiving Party contends that any material is privileged within five days of service, the parties  
14 shall meet and confer in good faith about the use of the document. If the Parties are unable to  
15 agree and thus have an Exclusive Privilege or Joint Privilege dispute, they shall submit the  
16 disputed Historical Document and a Discovery Letter Brief (in accordance with Magistrate Judge  
17 DeMarchi's Standing Order for Civil Cases) for *in camera* review. After five days, the served  
18 brief and exhibits shall be filed on the public docket, with the exception of any materials subject  
19 to such a dispute. The disputed document may not be filed or publicly disclosed before  
20 Magistrate Judge DeMarchi issues a ruling on the privilege dispute. If the above-described  
21 mechanism becomes unworkable for any reason, the parties agree to confer in good faith about  
22 other mechanisms for resolving privilege disputes regarding exhibits to motions.

23           c. **Trial.** The Parties agree to meet and confer in good faith and present to the Court as  
24 necessary in advance of trial all privilege disputes essential to their respective cases.

25           5. **Non-waiver of privilege.** Neither Party shall waive Exclusive Privilege or Joint  
26 Privilege by submitting Historical Documents subject to potential Exclusive Privilege or Joint  
27 Privilege claims to the Court for *in camera* review pursuant to this Stipulation and Order.

28           6. **Consent to Jurisdiction of this Court.** For the avoidance of any doubt, all

Parties to this stipulation agree that the stipulation is applicable to all Parties in both of the above-captioned cases, and the Court has the power and ability to enforce these stipulations with respect to all four Parties in both cases. Pursuant to the terms of this stipulation, no party will argue any waiver or disqualification has occurred on the basis of review or use of the Historical Documents against any other Party in either case, and no party will challenge the applicability of this stipulation to any Party. The Court has the jurisdiction and power to order that disclosure of Historical Documents as described in this stipulation does not cause waiver or disqualification in both cases for all three Parties.

Dated: February 21, 2025

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Defendants in No. 5:24-cv-0131-BLF

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1 Dated: February 21, 2025

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**[PROPOSED] ORDER**

**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

Dated:

By:

HON. VIRGINIA K. DEMARCHI  
United States Magistrate Judge  
Northern District Of California